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February 22, 2011

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

**RE: Notice of Written Ex Parte Communication;
WC Docket No. 07-245 ("Pole Attachment Proceeding")**

Dear Mr. Chairman:

As representatives of nine major electric utilities (Allegheny Power, Baltimore Gas and Electric, Dayton Power & Light, FirstEnergy, National Grid, NSTAR, PPL, South Dakota Electric Utilities, and Wisconsin Public Service: the "*Coalition of Concerned Utilities*"), we write in support of the recent letter to the Commission from Ameren Services Company, CenterPoint Energy Houston Electric, LLC, and Virginia Electric and Power Company (the "POWER Letter") that takes exception to the FCC's repeated claim that pole attachment costs constitute 20% to 40% of the total costs of fiber deployment.¹

As suspected, the Commission's claim appears to be unfounded and may well overstate the relative impact of pole attachment costs on fiber deployment. We are also troubled, as discussed below, that the Commission continues to rely on the staff's recommendations in the National Broadband Plan² as authority for these types of statements as well as for the core proposals in the pending Pole Attachment proceeding.³

The staff's recommendations in the National Broadband Plan were not based on a fair review of the extensive record developed in that proceeding.⁴ Rather than objectively evaluating the record, the staff endorsed widespread changes in the pole attachment rules recommended by the attacher community and simply ignored comments to the contrary by the electric utility industry.

¹ See, *Ex Parte Letter* filed by Ameren Services Company, CenterPoint Energy Houston Electric, LLC, and Virginia Electric and Power Company, WC Docket No. 07-245, GN Docket No. 09-51 (Feb. 15, 2011).

² See, Omnibus Broadband Initiative, Federal Communications Commission, Connecting America: The National Broadband Plan (2010).

³ Order and Further Notice of Proposed Rulemaking, FCC 10-84 (rel. May 20, 2010), published in the Federal Register on July 15, 2010, 75 Fed. Reg. 41338 ("Further Notice").

⁴ *Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245, Comments of the Coalition of Concerned Utilities at 2-7 (Aug. 16, 2010).

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In Chapter Six of the National Broadband Plan (“Infrastructure”), which deals with Pole Attachments, there are thirty-eight (38) citations to filings by cable companies, Competitive Local Exchange Carriers (“CLECs”), Incumbent Local Exchange Carriers (“ILECs”) and other representatives of those who attach to utility poles.⁵ On the other hand, there are only two (2) citations to comments and presentations on behalf of the entire electric utility industry, and they are hardly substantive.⁶

The number of comments alone, of course, is not determinative of the weight attached to them, but in this case it is compelling evidence that documented utility concerns were ignored by the staff in developing the Pole Attachment recommendations in the National Broadband Plan. Despite voluminous filings by electric utilities and their trade associations, the National Broadband Plan contains no analysis or discussion of competing viewpoints regarding Pole Attachments. The staff instead presented a one-sided “wish list” for attachers as if it were noncontroversial and beyond debate. There is not even any recognition that there is “another side of the story.”⁷

As shown in the POWER Letter, the Commission has continued to perpetuate the myths contained in the National Broadband Plan by repeating them as if they were fact. There is something amiss when Commission staff conducts an open notice-and-comment proceeding purportedly for the purpose of gathering information for the formulation of recommendations to the Commission and then completely ignores one side of the story. The problem is compounded when the Commission subsequently adopts the staff’s recommendations as its own, cites them as authority when proposing rule changes and then relies on them again to support unfounded claims such as the one flagged in the POWER Letter.

As described in detail in numerous submissions by the electric utility industry in this proceeding, many of the Commission’s proposals will create uncertainties, generate disputes,

⁵ *e.g.*, the National Cable & Telecommunications Association, NextG Networks, the American Cable Association, Time Warner Telecom, Bright House Networks, FiberNet, Kentucky Data Link, Crown Castle, DAS Forum, T-Mobile, Broadband & Wireless Pole Attachment Coalition, PCIA-The Wireless Infrastructure Association, Independent Telephone and Telecommunications Alliance, Level 3, Windstream, Qwest, Verizon, Sunesys and Fiber to the Home Council.

⁶ Footnote 16 cites a letter from Georgia Power explaining the reasons for make-ready delays, and footnote 32 cites a letter from the National Rural Electric Cooperative Association simply to identify the number of poles owned by cooperatives. There are no additional citations to comments, ex parte presentations or the many other submissions and presentations by representatives of the electric utility industry.

⁷ On April 26, 2010, before adoption of the Further Notice, the *Coalition* wrote to the Commission and complained that the staff had ignored virtually all electric utility concerns in developing the pole attachment recommendations in the National Broadband Plan. We urged the Commission to review objectively these issues *de novo*. No response was received, however, and the full Commission later embraced virtually all of the staff’s recommendations as its own in the Further Notice. See, Letter to Marlene H. Dortch, Secretary, from Jack Richards, WC Docket 07-245 et seq., April 26, 2010, and attachments.

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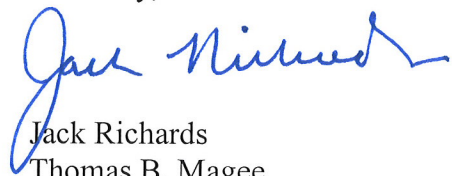
overwhelm utility and Commission resources, impact union agreements and undermine the safety and integrity of electric distribution systems. As if that were not enough, the Commission continues to imply -- without citing any valid authority -- that electric utilities are somehow "gouging" communications attachers by imposing pole attachment costs in the neighborhood of 20%-40% of the total costs of fiber deployment. As pointed out in the POWER Letter, it's not true.

Pole attachments are a serious matter with broad implications for the reliability of the nation's electric grid and the personal safety of those who work on or near poles, attachments and energized lines. The Commission should exercise extreme caution in adopting any rule changes that could undermine the viability of the electric utility industry or adversely affect the delivery of electric services to the public.

We urge the Commission, in fairness, to review its pole attachment proposals *de novo*, without reliance on the staff's one-sided and unfair recommendations in the National Broadband Plan. We also request a correction of the record regarding the Commission's repeated but unsupported claim that pole attachment costs constitute 20% to 40% of the total costs of fiber deployment.

Your attention to these important issues is appreciated.

Sincerely,



Jack Richards
Thomas B. Magee
Counsel for the

Coalition of Concerned Utilities

CC: (By electronic distribution and U.S. Mail)

The Honorable Michael J. Copps
The Honorable Robert M. McDowell
The Honorable Meredith Attwell Baker
The Honorable Mignon Clyburn
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